

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 22, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JUSTIN BOYD RENTERIA,

Defendant.

No. 2:17-cr-00150-SAB

**ORDER DISMISSING § 2255
PETITION; CLOSING FILE**

Previously, the Court directed the United States to respond to Defendant's ineffective assistance of counsel claim. ECF No. 153. Defendant was given thirty days after the United States filed its response to file a reply. On July 18, 2019, the United States filed its response, ECF No. 154, and Defendant did not file a reply.

Motion Standard

The Sixth Amendment guarantees a defendant the effective assistance of counsel at "critical stages of a criminal proceeding," including when he enters a guilty plea. *Lafler v. Cooper*, 566 U.S. 156, 165 (2012). To demonstrate counsel was constitutionally ineffective, a defendant must show counsel's representation "fell below an objective standard of reasonableness" and he was prejudiced as a result. *Strickland v. Washington*, 466 U.S. 668, 692 (1984). A defendant bringing a claim based on attorney error during the course of the legal proceeding can demonstrate prejudice by showing "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Lee*

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1 v. *United States*, __ U.S. __, 137 S. Ct. 1958, 1965 (2017). For instance, when a
2 defendant claims that his counsel's deficient performance deprived him of a trial
3 by causing him to accept a plea, the defendant can show prejudice by
4 demonstrating a "reasonable probability that, but for counsel's errors, he would not
5 have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*,
6 474 U.S. 52, 59 (1985).

7 **Analysis**

8 In his petition, Defendant argues he received ineffective assistance of
9 counsel in four instances: (1) his attorney was incompetent and ineffective
10 regarding 18 U.S.C. § 2252A and the affirmative defenses set forth in the statute;
11 (2) his attorney failed in performing his duty of loyalty when he encouraged
12 Defendant to enter a guilty plea; (3) his attorney failed to raise the issue of his right
13 to a speedy trial; and (4) his attorney failed to provide him with a copy of the
14 Indictment.

15 Contrary to Defendant's belief, his attorney was not incompetent and
16 ineffective when he failed to raise the affirmative defense found in 18 U.S.C. §
17 2252A(d).¹ There is no factual basis to support this defense. Defendant filed
18 numerous pretrial motions, including Motions to Compel. In reviewing those
19 motions, the Court reviewed the police reports surrounding the investigation into
20 Defendant's viewing of child pornography. Defendant's statements to law
21 enforcement do not support, or even suggest, that he had inadvertently downloaded
22 less than three images and promptly deleted them. Moreover, even after his first
23

24 ¹ An affirmative defense is available to those individuals who possessed less than
25 three images and promptly, and in good faith without retaining or allowing any
26 person other than law enforcement to access the images, took reasonable steps to
27 destroy the image or reported the matter to law enforcement. 18 U.S.C. §
28 2252A(d).

1 encounter with law enforcement, Defendant continued to access the peer-to-peer
2 network in seeking out child pornography.

3 There is nothing in the record to support Defendant's assertions that he was
4 pressured into entering into a plea agreement with the United States. The Court is
5 never interested in taking a guilty plea from a defendant who does not believe he
6 is, in fact, guilty. The Court engages in a lengthy colloquy in order to satisfy itself
7 that the defendant's plea is knowing, voluntary, and intelligent. Here, in response
8 to the Court's direct questioning on this issue, Defendant indicated he was entering
9 into the plea voluntarily and was not threatened or otherwise induced into signing
10 the plea. Defendant's assertions now that his plea was not knowing and voluntary
11 is belied by the record.

12 Defendant signed three waivers of speedy trial rights that clearly
13 demonstrate that he knowingly waived his right to a speedy trial and consented to
14 moving the trial dates. Moreover, whether to continue the trial date falls squarely
15 within the attorney's authority to manage the conduct of trials and therefore,
16 cannot be the basis for an ineffective assistance of counsel claim. *See Taylor v.*
17 *Illinois*, 484 U.S. 400, 417-18 (1988).

18 Finally, the record demonstrates that, at his arraignment, Defendant was
19 represented by counsel and was advised of his rights, including the allegations
20 contained in the Indictment.

21 Defendant has not shown his counsel representation "fell below an objective
22 standard of reasonableness" and he was prejudiced as a result. On the contrary,
23 Defendant's counsel was able to secure a plea to an offense that lowered
24 Defendant's base offense level, which in turn avoided the statutory mandatory
25 minimum applicable to his conviction. Moreover, while Defendant did not receive
26 his requested sentence of time served, he did receive a sentence well below the
27 sentencing guideline range. Defendant has not shown how he was prejudiced by
28 his counsel's performance. As such, Defendant's claim of ineffective assistance of

1 counsel is dismissed.

2 Accordingly, **IT IS HEREBY ORDERED:**

3 1. Defendant's Motion to Arrest Judgment and Sentence for Violation of
4 Constitutional Rights and Lack of Jurisdiction, construed as a Motion to Vacate,
5 Set Aside, or Correct Sentence under 28 U.S.C. §2255, ECF No. 152, is **DENIED**.

6 2. The Court certifies that an appeal of this decision would not be taken
7 in good faith.

8 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
9 forward copies to Defendant and counsel, and close the file.

10 **DATED** this 22nd day of August 2019.

A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

Stanley A. Bastian
United States District Judge